

**IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

JEFFREY BROWN,)	
)	
Plaintiff,)	
)	
v.)	CIVIL ACTION NO. 4:22-CV-04059
)	
VALVOLINE, LLC, <i>et al.</i> ,)	
)	
Defendants.)	

**PLAINTIFF’S OPPOSED MOTION FOR CONTINUANCE OF THE TRIAL AND
FINAL PRETRIAL CONFERENCE**

Now comes the Plaintiff, Jeffrey Brown, by and through undersigned counsel, and hereby respectfully moves the Court for a continuance of the trial currently scheduled to begin on July 1, 2024 at 9:00 AM, and of the final pretrial conference scheduled for June 17, 2024 at 1:30 PM. (*See* Jan. 19, 2023 Scheduling Order, Doc. #: 14.) Brown’s undersigned counsel conferred with counsel for the Defendants and confirmed that the Defendants are opposed to this request for a continuance. The Parties received correspondence from the Court indicating a likely need to move the trial date.

One of Brown’s undersigned counsel, Mr. Lewis Zipkin, will be officiating his granddaughter’s wedding in Cleveland, Ohio on June 22, 2024, and will be coordinating the travel and accommodations for several out-of-town guests in the week leading up to the scheduled wedding date. This momentous family event overlaps with the final pretrial conference scheduled for June 17, 2024, and impedes preparation for the trial scheduled for July 1, 2024. Mr. Zipkin communicated this conflict in writing both to the Court and to counsel for the Defendants on May 29, 2024; on May 31, 2024, the Court

indicated it would rule accordingly on a request for continuance. (*See* May 29, 2024 Email Correspondence, Ex. 1.)

Thereafter, Brown's undersigned counsel conferred with counsel for the Defendants regarding this motion for continuance and whether the motion could be presented as unopposed. (*See* June 3, 2024 Email Correspondence, Ex. 2.) Despite receiving correspondence from the Court indicating the trial would likely need to be moved to allow time for a ruling on their summary judgment motion, the Defendants nevertheless would not consent to Brown filing this motion for continuance as an unopposed motion. (*See* June 4, 2024 Email Correspondence, Ex. 3.)

Be that as it may, the Court should still grant this motion for continuance because it will provide Brown and the Defendants with more time to attempt an out-of-court resolution of this lawsuit. The Parties previously used a private mediator, and while progress was made that day, a satisfactory resolution could not be reached between the Parties. Continuing both the final pretrial conference and the trial will provide Brown and the Defendants with another chance at resolving this dispute without the need for further litigation or the Court's intervention.

Accordingly, Brown proposes for the Court's consideration the following dates in Fall 2024:

- (a) Final pretrial conference held on October 7, 2024 at 1:30 PM; and
- (b) Trial to begin on October 21, 2024 at 9:00 AM.

Brown will, however, defer to the Court's scheduling preferences and existing case schedules. This is the first time Brown has sought a continuance in this case. This

continuance is sought in good faith to accommodate not only the needs and schedules of all Parties involved, but also to allow the Parties to have another chance at reaching an informal resolution of this lawsuit, if possible.

Respectfully submitted,

/s/ Kevin M. Gross

Lewis A. Zipkin, Esq. (Ohio Bar No. 0030688)
Kevin M. Gross, Esq. (Ohio Bar No. 0097343)
ZIPKIN WHITING CO., L.P.A.
3637 Green Road, Second Floor
Beachwood, Ohio 44122
Phone: (216) 514-6400
Fax: (216) 514-6406
Email: lawsmatter2@gmail.com
kgross@zipkinwhiting.com

Pro Hac Vice Counsel for Plaintiff Jeffrey Brown

CERTIFICATE OF CONFERENCE

I hereby certify that on June 4, 2024, I conferred with counsel for the Defendants and confirmed that the Defendants are opposed to this request for a continuance.

Respectfully submitted,

/s/ Kevin M. Gross

Lewis A. Zipkin, Esq. (Ohio Bar No. 0030688)
Kevin M. Gross, Esq. (Ohio Bar No. 0097343)

Pro Hac Vice Counsel for Plaintiff Jeffrey Brown

CERTIFICATE OF SERVICE

A true and correct copy *Plaintiff's Opposed Motion for Continuance of the Trial and Final Pretrial Conference* was served via the Court's CM/ECF system on June 5, 2024, upon:

Jeremy W. Hawpe, Esq.
LITTLER MENDELSON, P.C.
2001 Ross Avenue, Suite 1500
Dallas, Texas 75201
Phone: (214) 880-8100
Fax: (214) 880-0181
Email: jhawpe@littler.com

and

Urvashi Morolia, Esq.
LITTLER MENDELSON, P.C.
1301 McKinney Street, Suite 1900
Houston, Texas 77010
Phone: (713) 951-9400
Fax: (713) 951-9212
Email: umorolia@littler.com

*Counsel for Defendants Valvoline, LLC,
and Frank Harris*

Respectfully submitted,

/s/ Kevin M. Gross

Lewis A. Zipkin, Esq. (Ohio Bar No. 0030688)
Kevin M. Gross, Esq. (Ohio Bar No. 0097343)

Pro Hac Vice Counsel for Plaintiff Jeffrey Brown



Ryan Dalton <rdalton@zipkinwhiting.com>

Fwd: Jeffrey Brown vs Valvoline case# 4-22-cv04059

1 message

Kevin Gross <kgross.zipkinwhiting@gmail.com>

Mon, Jun 3, 2024 at 10:56 AM

To: Ryan Dalton <rdalton@zipkinwhiting.com>

Kevin Gross, Esq.
Zipkin Whiting Co., L.P.A.
The Zipkin Whiting Building
[3637 Green Road](#)
[Beachwood, OH 44122](#)
[216-514-6400](#)
(f) 216-514-6406
kgross@zipkinwhiting.com



Begin forwarded message:

From: Lewis Zipkin <lawsmatter2@gmail.com>
Date: June 3, 2024 at 7:31:07 AM EDT
To: Kevin Gross Gross <kgross.zipkinwhiting@gmail.com>
Subject: Fwd: Jeffrey Brown vs Valvoline case# 4-22-cv04059

Sent from my iPhone

Lewis A. Zipkin

Zipkin Whiting Law Offices
Zipkin Whiting Bldg
[3637 S Green Rd](#)
[Beachwood, Ohio 44122](#)

[216-214-2541](#) cell
216-514-6400 office Ext. 324

[4822 Ocean Blvd suite 2 B](#)
[Siesta Key, Florida 34242](#)

Begin forwarded message:

From: Lewis Zipkin <lawsmatter2@gmail.com>
Date: May 31, 2024 at 5:31:01 PM EDT
To: Rhonda Hawkins <Rhonda_Hawkins@txs.uscourts.gov>
Cc: "jhawpe_littler.com" <jhawpe@littler.com>
Subject: Re: Jeffrey Brown vs Valvoline case# 4-22-cv04059

Thank you.
Sent from my iPhone

Zipkin Whiting Law Offices
Zipkin Whiting Bldg
3637 S Green Rd
Beachwood, Ohio 44122

216-214-2541 cell
216-514-6400 office Ext. 324

4822 Ocean Blvd suite 2 B
Siesta Key, Florida 34242

On May 31, 2024, at 4:10 PM, Rhonda Hawkins
<Rhonda_Hawkins@txs.uscourts.gov> wrote:

Good Afternoon:

I have talked to Judge Hanen about your request for a continuance. Please file a motion and the Court will rule accordingly. Thank you.

Rhonda

Rhonda S. Hawkins

Case Manager to

Honorable Andrew S. Hanen

[515 Rusk Street, Room 9110](#)

[Houston, TX 77002](#)

(713)250-5518

-----Original Message-----

From: Rhonda Hawkins

Sent: Wednesday, May 29, 2024 4:01 PM

To: Lewis Zipkin <lawsmatter2@gmail.com>

Cc: jhawpe_littler.com <jhawpe@littler.com>

Subject: RE: Jeffrey Brown vs Valvoline case# 4-22-cv04059

Good Afternoon:

As my voice message says, it is much easier to reach me by email as I can generally respond right away. First, we start a criminal trial on June 3 which will take precedence over any civil case. Additionally, there is pending a motion for summary judgment on this case that requires a ruling before we can proceed to trial. This case may need to be reset to a later date in the fall.

Rhonda

Rhonda S. Hawkins

Case Manager to

Honorable Andrew S. Hanen

515 Rusk Street, Room 9110

Houston, TX 77002

(713)250-5518

-----Original Message-----

From: Lewis Zipkin <lawsmatter2@gmail.com>

Sent: Wednesday, May 29, 2024 3:30 PM

To: Rhonda Hawkins <Rhonda_Hawkins@txs.uscourts.gov>

Cc: jhawpe_littler.com <jhawpe@littler.com>

Subject: Jeffrey Brown vs Valvoline case# 4-22-cv04059

CAUTION - EXTERNAL:

Dear Ms Hawkins:

I've tried to reach you by telephone on a couple of occasions and I'm sure you have been rather busy with all that's going on in the courts today .

I represent the plaintiff in the captioned case as well as plan on trying the case in July. I did leave a voice message regarding my concerns in attending the scheduled pre-trial on June 17, 2024. My client is fine with that date however I am officiating the wedding of my granddaughter (whose mother who is my daughter) and has been experiencing some serious medical issues causing me to have to deal with pre-wedding plans which wedding is scheduled for June 22 2024. Many guests from out of the city of Cleveland, where we live are coming to attend during the week prior to the

As a consequence, I contacted Mr. Hawley (ccd above) and he is more than willing to assist in finding an earlier date than what is currently scheduled for in person pretrial. Following the June 17 date he is heavily scheduled and authorized my contacting the court to see if we could get an earlier date for the pre-trial. that was the purpose of my calling and attempting to reach you.

I am more than willing to prepare a written motion if the Court so prefers or if there is a way we can reschedule orally if that is convenient for the Court I would be very appreciative.

I thank you kindly in advance for any assistance we might be able to obtain.

Very truly yours

Lew zipkin

Sent from my iPhone

Lewis A. Zipkin

Zipkin Whiting Law Offices

Zipkin Whiting Bldg

3637 S Green Rd

Beachwood, Ohio 44122

216-214-2541 cell

216-514-6400 office Ext. 324

4822 Ocean Blvd suite 2 B

Siesta Key, Florida 34242

CAUTION - EXTERNAL EMAIL: This email originated outside the Judiciary.

Exercise caution when opening attachments or clicking on links.



Ryan Dalton <rdalton@zipkinwhiting.com>

Brown v. Valvoline

2 messages

Kevin Gross <kgross.zipkinwhiting@gmail.com>

Mon, Jun 3, 2024 at 6:39 PM

To: "Jeremy W. Hawpe" <JHawpe@littler.com>, Lewis Zipkin <lawsmatter2@gmail.com>, Urvi Morolia <UMorolia@littler.com>

Hi Jeremy, please advise if I can represent to the court that the attached motion is unopposed. I attached a word version so you can redline it, if necessary. Thanks.

Kevin Gross, Esq.
 Zipkin Whiting Co., L.P.A.
 The Zipkin Whiting Building
 3637 Green Road
 Beachwood, OH 44122
 216-514-6400
 (f) 216-514-6406
kgross@zipkinwhiting.com


Motion for Continuance | Brown v. Valvoline.docx

24K

Kevin M. Gross <kgross.zipkinwhiting@gmail.com>

Tue, Jun 4, 2024 at 11:33 AM

To: "Hawpe, Jeremy W." <JHawpe@littler.com>

Cc: Lewis Zipkin <lawsmatter2@gmail.com>, "Morolia, Urvi" <UMorolia@littler.com>

Bcc: rdalton@zipkinwhiting.com

OK, thanks for the update.

Kevin Gross, Esq.
 Zipkin Whiting Co., L.P.A.
 The Zipkin Whiting Building
[3637 Green Road](#)
[Beachwood, OH 44122](#)
 216-514-6400
 (f) 216-514-6406
kgross@zipkinwhiting.com

On Tue, Jun 4, 2024 at 9:11 AM Hawpe, Jeremy W. <JHawpe@littler.com> wrote:

Hi Kevin: I'm going to have to consult with my client and then check calendars. When Lew and I have talked in the past (on a few occasions), the request was simply to adjust the pretrial deadline and nothing more. I know that the proposed trial date in the motion will not work as I have another matter set then. I'll be in touch as soon as I hear back.

Jeremy W. Hawpe

Office Managing Shareholder

214.880.8147 direct, 214.673.7464 mobile, 214.880.0181 fax

Pronouns: He/Him



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2001 Ross Avenue, Suite 1500, Dallas, TX 75201-2931

From: Kevin Gross <kgross.zipkinwhiting@gmail.com>
Sent: Monday, June 3, 2024 5:40 PM
To: Hawpe, Jeremy W. <JHawpe@littler.com>; Lewis Zipkin <lawsmatter2@gmail.com>; Morolia, Urvi <UMorolia@littler.com>
Subject: Brown v. Valvoline

[EXTERNAL E-MAIL]

Hi Jeremy, please advise if I can represent to the court that the attached motion is unopposed. I attached a word version so you can redline it, if necessary. Thanks.

Kevin Gross, Esq.
Zipkin Whiting Co., L.P.A.
The Zipkin Whiting Building
[3637 Green Road](#)
Beachwood, OH 44122
216-514-6400
(f) 216-514-6406
kgross@zipkinwhiting.com

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Ryan Dalton <rdalton@zipkinwhiting.com>

Fwd: Brown v. Valvoline

1 message

Kevin Gross <kgross.zipkinwhiting@gmail.com>

Wed, Jun 5, 2024 at 3:43 PM

To: Ryan Dalton <rdalton@zipkinwhiting.com>

Kevin Gross, Esq.
Zipkin Whiting Co., L.P.A.
The Zipkin Whiting Building
3637 Green Road
Beachwood, OH 44122
216-514-6400
(f) 216-514-6406
kgross@zipkinwhiting.com



Begin forwarded message:

From: "Hawpe, Jeremy W." <JHawpe@littler.com>
Date: June 4, 2024 at 5:48:33 PM EDT
To: Kevin Gross <kgross.zipkinwhiting@gmail.com>, Lewis Zipkin <lawsmatter2@gmail.com>
Cc: "Morolia, Urvi" <UMorolia@littler.com>
Subject: RE: Brown v. Valvoline

Hi Kevin: my client is opposed to a motion to continue the trial setting. The October date proposed does not work on our end. As we started to look at the calendar, I think we'd have to look well into 2025 before we could find a week that was free for trial, and we're not in favor of that. Let us know if you'd like to discuss – otherwise, please indicate we are opposed to the motion you circulated yesterday.

Jeremy W. Hawpe
Office Managing Shareholder
214.880.8147 direct, 214.673.7464 mobile, 214.880.0181 fax
JHawpe@littler.com

Pronouns: He/Him



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From: Kevin Gross <kgross.zipkinwhiting@gmail.com>
Sent: Monday, June 3, 2024 5:40 PM

Case 4:22-cv-04059 Document 40 Filed on 06/05/24 in TXSD Page 13 of 13
To: Hawpe, Jeremy W. <JHawpe@littler.com>; Lewis Zipkin <lawsmatter2@gmail.com>; Morolia, Urvi
<UMorolia@littler.com>
Subject: Brown v. Valvoline

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Beachwood, OH 44122
216-514-6400
(f) 216-514-6406
kgross@zipkinwhiting.com

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